

PRUDENTIAL MINING & EXPLORATION, INC.

IBLA 81-311

Decided December 22, 1981

Appeal from a decision of the California State Office, Bureau of Land Management, declaring lode mining claims abandoned and void. CA MC 80203 through CA MC 80222.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment -- Mining Claims: Location -- Mining Claims: Recordation

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

3. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

The mailing of a notice of location prior to the due date is not sufficient to comply

with the requirements of the statute unless the notice is actually received by the proper BLM office before such date.

APPEARANCES: Paul M. Turkheimer, Vice President, Prudential Mining & Exploration, Inc., for appellant.

#### OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Prudential Mining & Exploration, Inc., has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated January 21, 1981, which declared appellant's mining claims abandoned and void. <sup>1</sup>/

The claims in question were located on October 1, 1980. BLM received a copy of the notices of location on January 8, 1981. After receiving the documents, BLM declared the claims void, rejected the filing, and returned the documents to appellant. Appellant filed a timely appeal.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires the owner of an unpatented lode or placer mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the BLM office designated by the Secretary of the Interior within 90 days after the date of the location. It also provides that failure to file timely such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner and renders the claim void. Faith C. Hartman, 44 IBLA 310 (1979).

The pertinent regulation, 43 CFR 3833.1-2(b), provides as follows:

The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location \* \* \*.

[2] The applicable regulation, 43 CFR 3833.4(a), provides: "(a) The failure to file an instrument required by §§ 3833.1-2(a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void."

Where the owner of an unpatented mining claim located after October 22, 1976, fails to file a location notice with BLM within

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<sup>1</sup>/ Appellant's lode mining claims are the Prudential #1 through #8, Happiness #1 through #5, Stonie lode claim, Independence #2 through #4, Independence Silver West #5, #7, and #8.

90 days after the date of location, his claim is properly deemed conclusively to be abandoned and to be null and void. Tod Anderson, 50 IBLA 66 (1980); Beryl Rhodes, 46 IBLA 287 (1980). The Board has decided in numerous cases that the statute permits no exception to the requirement of timely filing of the notice of location with BLM. See Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (1978), aff'd, Northwest Citizens for Wilderness Mining v. Bureau of Land Management, Civ. No. 78-46-M (D. Mont. June 19, 1979).

Appellant does not deny that the location notices were not received within the required 90-day period. However, it contends the notices were mailed on December 24, 1980, 7 days before the due date. Appellant asserts it cannot take responsibility for the delay due to the failure of the post office department to deliver the mail in a timely manner. This argument is without merit.

[3] The mailing of a notice of location prior to the due date is not sufficient to comply with the requirements of the statute unless the letter is actually received by the proper BLM office before such date. The Board has repeatedly held that a mining claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979). Filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

As the State Office has indicated, appellant may relocate these claims and file notice of this as provided in 43 CFR 3833.1 subject to any intervening rights of third parties, and assuming no intervening closure of the land to mining location.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier  
Administrative Judge

We concur:

Anne Poindexter Lewis  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge

